

## MEMORANDUM

**DATE:** May 13, 2009  
**TO:** The Chesapeake Bay Board  
**FROM:** Patrick T. Menichino, Environmental Compliance Specialist  
**SUBJECT:** CBV 09-001- Thomas Hutchens, 516 Sir George Percy  
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Mr. Thomas Hutchens (owner) 516 Sir George Percy, Kingsmill, filed an appeal to James City County's Chesapeake Bay Board on March 23, 2009. Mr. Hutchens is appealing a Notice of Violation and administrative order issued by the County on October 21, 2008. The Notice of Violation ordered the removal of an unauthorized retaining wall from within the Resource Protection Area (RPA) buffer and Conservation Easement (CE) located on his property. Staff has reviewed the unauthorized encroachment and estimates the RPA impacts as 50 square feet of decorative concrete block retaining wall, and 500 square feet of turf lawn.

On September 8, 2008 Staff became aware of the unauthorized encroachments following the submission of a buffer modification request to the Environmental Division by the owner. Staff has met with the owner several times to discuss resolving the RPA and CE issues on the property. The existence of a CE on the property requires that the CE be vacated and exchanged for a similar sized CE elsewhere in Kingsmill. The owner and representatives of Kingsmill have been working towards achieving that exchange, but as of this date the process has not been completed.

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. Mr. Hutchens is the original owner of the property. The lot was recorded after the 1990 adoption of the Ordinance. The residence was constructed in 2005 and both the RPA and CE boundaries were identified on the residence's site development plan.
2. Mr. Hutchens' contracted to have a 50' long x 5' high decorative concrete block retaining wall installed on his property. The wall is situated approximately 20' channelward, of the 100' RPA buffer line.
3. Mr. Hutchens has recently applied for an after the fact building permit for the wall.
4. Staff has evaluated the adverse impacts associated with the 50 SF of impervious retaining wall and has determined them to be minimal. Staff has also noted that a significant amount of turf grass (approx. 500 SF) that has been established within the RPA.
5. The owner in his appeal letter indicates a willingness to provide native mitigation plantings in an area below the wall. However, the plan submitted along with the appeal does not show any proposed mitigation plantings.
6. The issue of the CE exchange has not yet been resolved. Staff would not recommend the Board act upon this appeal until the CE issue is finalized.
7. The retaining wall is considered to be an accessory structure.
8. To be consistent with the intent of the Ordinance, Staff does not support the granting of this appeal.

Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance. The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Should the Board vote to grant the appeal, staff offers the following recommendations and guidance for consideration.

1. The owner shall mitigate for the retaining wall by installing (2) canopy trees, (4) understory trees and (6) shrubs in the area below the existing retaining wall. All plant material shall be native species and should meet the following size requirements: shrubs 3-5 gallon container size and trees 6-7 feet in height and 1"-1 ½" in caliper.
2. The removal of the existing turf from within the RPA buffer should be considered as a condition of approval.
3. A revised plan entitled: "Mitigation & Restoration Plan, for 516 Sir George Percy", incorporating any Board recommendations must be submitted to the Division for approval.
4. A Chesapeake Bay Restoration Agreement must be executed, along with surety in the amount of \$1,000.00 and submitted to the County in a form acceptable to the County Attorney to guarantee the full implementation of the "Mitigation & Restoration Plan for 516 Sir George Percy".